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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20544**

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JUL 28 1994

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of)

Implementation of Section 17 of the)
Cable Television Consumer Protection and)
Competition Act of 1992)

Compatibility Between Cable Systems)
and Consumer Electronic Equipment)

ET Docket No. 93-7

OPPOSITION TO PETITIONS FOR RECONSIDERATION

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July 28, 1994

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OPPOSITION TO PETITIONS FOR RECONSIDERATION

The National Cable Television Association, Inc. ("NCTA"), by its attorneys, hereby opposes certain aspects of the Petitions for Reconsideration filed by the Electronic Industries Association, Inc. ("EIA") and Zenith Electronics Corporation in the above-captioned proceeding.

INTRODUCTION AND SUMMARY

The petitions for reconsideration filed by cable operators and cable equipment manufacturers in response to the Commission's First Report and Order on compatibility between cable systems and consumer electronics equipment overwhelmingly demonstrate that the prohibition on changes in infrared (IR) codes is a bad policy.¹ Indeed, preventing operators from changing the infrared codes used to operate the remote control functions of

¹ See e.g. Petitions for Reconsideration and Clarification of NCTA, CATA, General Instrument Corporation, Telecable, Time Warner, Antec, Scientific-Atlanta, and Cablevision.

their set-top devices will frustrate the Commission's stated objective to open up markets to competitive equipment providers in order to give product developers, as well as cable operators, the ability and incentive to introduce new products and respond to consumer demand.

As the petitions show, requiring operators to continue to use old IR codes, in order to maintain the compatibility of subscriber-owned remotes, severely limits their ability to upgrade to new or different equipment brands. Most IR technology is proprietary and is not likely to be made available to competitors without a license fee. And, as a practical matter, changing one set of IR codes to conform to another set is a complex and costly process. This makes it difficult for new vendors to enter the marketplace. Given the alternative approaches offered by petitioners to protect consumers -- without freezing IR code technology and the introduction of new equipment -- NCTA again urges the Commission to rescind its ban on IR code changes in set-top equipment.

The Petitions for Reconsideration filed by EIA and Zenith address other issues, however, that are of major concern to the cable industry: separation of command set functions, channel mapping and the consumer advisory labeling requirement. Most importantly, we oppose EIA's apparent request that cable operators be limited to offering component descramblers which perform only signal security functions. We do not believe that the Commission ever intended such a limitation. And we have urged the FCC to clarify that the requirement that the Decoder Interface device separate conditional access functions from all other command set functions does not foreclose cable systems, along with other video providers, from attaching a decoder device capable of providing a variety of competitive services and functions.

In addition, NCTA is very disappointed that EIA has reversed its position on channel mapping and now objects to the use of such techniques in cable systems. Although the Report and Order does not address the issue, we urge the Commission to reject EIA's position and recognize that channel mapping is an important tool to enhance and simplify the delivery of cable services to subscribers. Finally, NCTA opposes EIA and Zenith's petition to eliminate the consumer advisory labeling requirement. The consumer advisory is an efficient and effective means to alleviate consumer confusion and misunderstanding as to whether TV equipment is fully compatible with the FCC's requirements for cable-ready equipment.

DISCUSSION

I. SEPARATION OF SIGNAL ACCESS COMMANDS AND OTHER FUNCTIONS

In a rather cryptic statement, EIA urges the Commission to reiterate that paragraph 42 of the Report and Order, which deals with separation of command set functions, requires that "the Decoder Interface be designed in such a way as to enable all functions other than signal security to be provided in competitively supplied equipment" but that "cable operators be required to offer component descramblers which perform only signal security functions".²

While it is unclear exactly what EIA is getting at here, we believe that the Commission needs to clarify that paragraph 42 means that the Decoder Interface standard should be designed to permit alternative video providers,

² EIA Petition at 9-10.

including cable systems, to attach decoder devices that are capable of providing a variety of competitive services and functions. Consequently, we strongly object to the notion that cable operators should be limited to offering decoders that only perform signal access functions.

As we pointed out in our Petition for Reconsideration, paragraph 42's requirement that the component Decoder Interface device separate conditional access functions from all other command set functions could be misinterpreted as foreclosing cable operators from providing competitive services. The reason for the separation, however, is not to limit cable to descrambling-only functions but to ensure that cable's provision of a descrambler/decoder module does not interfere with or impede a competing video delivery system or third party distributor from being able to connect to the television interface. Any other interpretation would be contrary to the Commission's policy objectives of promoting consumer access to competing video delivery systems for all non-security related services and opening up the market to competitive equipment providers.³

As the Commission pointed out in its Report and Order:

The introduction of this feature [the Decoder Interface] in new consumer TV equipment and its use with component descrambler/decoders will constitute a significant step toward achievement of more effective compatibility between cable systems and consumer

³ Report and Order, ET Docket No. 93-7 at paras. 42 and 5 ("Report and Order"). If EIA's petition is seeking clarification that cable operators should be required to make available a certain number of units which only descramble, we submit that the industry should not be required to tool up for products with no demonstrated market demand. This would be akin to requiring TV manufacturers to produce a certain number of "cable-ready" units which only function as monitors or requiring VCR manufacturers to produce a certain number of VCRs which only record and play-back.

electronics equipment at reasonable cost. The numerous improvements in the forthcoming standard, particularly its capabilities for serving all existing scrambling systems, for accommodating new cable technologies and services and for providing a migration path to digital cable service, make it a clear choice over the existing EIA/ANSI 563 standard.⁴

If the cable industry is restricted to merely providing a plug-in descrambler, it will be unable to offer subscribers the functionalities that it currently provides in set-top converters, much less the full array of potential new services. Indeed, under EIA's scenario, cable would not only be competitively disadvantaged as compared to other video providers and equipment suppliers, but television set and VCR manufacturers could have the ability to define the entire universe of command set functions accessible by the consumer. This would mean that subscribers would have to purchase new TVs or VCRs in order to enjoy even incremental increases in functionality. We do not believe that the Commission intended to limit subscriber choice to whatever functions are built into the consumer equipment.

Throughout its ongoing negotiations with the consumer electronic industry in the Cable-Consumer Electronics Compatibility Advisory Group ("CAG") process, cable representatives have advocated the adoption of a versatile, extendible and inter-operable command set as part of the Decoder Interface standard. This will enable subscribers to choose whether to buy or lease new services and functions from a variety of providers, including equipment manufacturers, cable operators, third party distributors or independent retailers. In order to accomplish this goal, NCTA urges the

⁴ Report and Order at para. 39 (emphasis added).

Commission to make clear that its separation requirement does not preclude cable operators from participating in the competitive marketplace for "cable-ready" in-home equipment services.

II. CHANNEL MAPPING

Despite a seven-month-old understanding among members of the CAG to preserve cable operators' ability to utilize "channel mapping" techniques, EIA now advocates banning it on all cable systems. NCTA is extremely disappointed that EIA, having recognized the legitimate reasons for cable operators to use "channel mapping", has reversed its position at this juncture -- particularly when the Commission's Order does not even address the issue.

On December 15, 1993, the CAG participants agreed during a meeting in Chicago that cable operators should maintain the right to use channel mapping, provided subscribers are given appropriate documentation on where the signal is carried. This position was reaffirmed in an April 15, 1994 letter from George Hanover of the EIA/Consumer Electronics Group to Joseph Van Loan of Cablevision Industries regarding changes in the draft Interim Standard IS-132, or the cable television channelization plan. In the attached letter, Mr. Hanover recommended the following modifications to the plan, which were accepted by the IS-132 committee:

This standard is not intended to preclude channel mapping in cable systems. To provide compatibility, cable systems will follow the frequency allocations designated in the channelization plan and will seek to ensure that all channel information that is supplied by the cable system properly identifies channels by numbers as well as by signal carried. The cable operator will

provide information for printed and on-screen program guides, so that subscribers can directly reference programs with the channel number plan used on cable-ready receivers. (Emphasis added)

After successful resolution of this issue, EIA has now reversed itself, claiming that channel mapping "causes consumer confusion." We believe that the Commission should recognize, however, that channel mapping has important pro-consumer benefits, particularly rectifying problems associated with delivering high quality signals on their assigned frequencies.

Some cable operators use the channel mapping features in set-top converters, for example, to enhance programming on channels that are susceptible to interference as a result of television sets and VCRs containing inadequate internal shielding. The cable operator "maps" the affected channel from one frequency to another to alleviate picture problems and subscriber complaints. In order to enable broadcast signals to appear on their FCC-assigned frequency (pursuant to must carry and retransmission consent rules), while securing them from direct pick up interference, the cable operator may need to employ channel mapping.

An operator also may use channel mapping to move a broadcast channel that is above the frequency range of the system, i.e., channel 98 in a 60-channel cable system, to a lower channel. This technique provides consumers with consecutive numbering in the channel selection process and avoids gaps in channel line-ups.

Channel mapping techniques also facilitate new services such as impulse pay-per-view programming and automatic number identification telephone ordering systems by directing subscribers to an instruction channel for ordering a program. Under this scenario, when a subscriber

tunes to a service for the purchase of a movie, for example, the converter automatically maps the viewer to an instruction or preview channel. Once the subscriber completes the on-screen instructions for ordering the movie, the converter tunes to the actual channel. This technique, called "dynamic mapping", is also quite useful to support near video-on-demand systems where programming has multiple staggered start times.

The cable industry recognizes that continued use of channel mapping in the new set-back decoder environment will necessitate some standardization of the methods for downloading channel maps into new cable ready equipment. And we are confident that this can be accomplished through the ongoing work of the Decoder Interface standard committee process. But as long as consumer electronics manufacturers continue to market and sell products that do not comply with the cable-ready shielding requirements (yet tune cable channels), coupled with the millions of sets already in subscribers' homes, there is a continuing need for channel mapping.⁵

Therefore, we urge the Commission to reject EIA's contention that this tool to enhance and simplify the delivery of cable services to subscribers should be restricted.

III. CONSUMER ADVISORY LABELING

A. Need to Inform Consumers

⁵ In arguing for a delay in the implementation of the "cable-ready" terminology restriction, EIA expresses its members' concern about costs associated with reprinting marketing and promotional material. EIA gives no regard, of course, to the enormous costs that cable operators employing channel mapping techniques would have to bear to alter their systems and channel line-ups to comply with the ban.

In their Petitions, EIA and Zenith seek the elimination of the Commission's consumer advisory labeling requirement for all "cable-ready" equipment.⁶ This rule requires "consumer TV receivers and VCRs that incorporate features intended to be used with cable service but do not fully comply with the "cable ready" technical standards to be labeled with an advisory that appears on the device and on its packaging."⁷ EIA claims that this rule is beyond the Commission's authority and forces manufacturers to "denigrate their own products" through "negative labeling." We do not agree.

In adopting the equipment compatibility rules, the Commission gave equipment manufacturers the flexibility to market consumer TV equipment that has some, but not all, of the characteristics of "cable ready" equipment. Since non-cable ready equipment will continue to be in the marketplace, it applied the technical standards for "cable ready" equipment only to devices specifically marketed as "cable ready" or "cable compatible". The Commission remained concerned, however, that simply limiting the applicability of the "cable ready" standards to devices specifically marketed in this manner, while allowing other non-conforming products to be sold, would "lead to confusion for consumers about the extent to which the products that are available to them in the market are compatible with cable service."⁸ This confusion is precisely what led Congress to enact the

⁶ EIA Petition at 3-5; see also Zenith Petition for Reconsideration.

⁷ Report and Order at para. 83.

⁸ Id.

equipment compatibility provision of the 1992 Cable Act in the first place. And this is why a consumer advisory is necessary.

Indeed, the fundamental cable/consumer electronics interface problem is failed customer expectations about the performance of television equipment when connected to cable. The consumer advisory protects consumers from ill-informed sales personnel who, in an effort to close the sale, often provide inaccurate or insufficient information to consumers about the capabilities of true "cable-ready" equipment versus other equipment. The consumer, viewing the picture on a single channel laser disk in the store, has no reason to ask about potential technical deficiencies when the equipment is connected to cable. Misleading sales pitches about "cable compatibility", intentional or not, cause the consumer to leave the sales room floor with false expectations.⁹

A clear and readily apparent advisory on the product and its packaging will help consumers sort through this complex issue and will motivate sales personnel to have answers to questions prompted by the advisory. Without the advisory, purchasers will continue to buy equipment, only to become frustrated and angry when they discover the problem at home, after the television is set up, the packaging thrown away, and return of the product is either inconvenient or impossible. Supplemental equipment may be their only recourse to address such problems as direct

⁹ This problem was acknowledged by Michael Schulhof, President, Sony Corporation of America, at the opening general session of the NCTA National Show in New Orleans on May 23, 1994: "In the past, in fact, companies that make television sets have probably caused some degree of confusion to the public. And probably some consternation among the cable industry. We advertise television sets as cable ready -- people take them home, attach them to cable and find they do not get the full spectrum of services that they thought they might, when the salesman at the electronics store sold them the set."

pick up interference, image frequency rejection, overload, and back feed of spurious signals.

The Commission has statutory authority to require a consumer advisory, Section 624A of the 1992 Cable Act directs the FCC to adopt regulations "as are necessary to assure [such] compatibility" between televisions and VCRs and cable systems. In furthering the Congressional objective to promote compatibility as soon as possible, the Commission adopted certain measures, including labeling, to minimize compatibility problems in the short-term and to ensure future compatibility between cable and home TV equipment. Abandoning the consumer advisory labeling requirement would be a step backward in the Commission's carefully crafted compatibility scheme.

B. Location of Advisory Statement

In arguing against a labeling requirement, Zenith maintains that the requirement will not be effective because advisories on packaging are typically not inspected or even seen by consumers in the store. And if the statement is not specifically read by the consumer in the store, it will cause confusion in the home.

Zenith is correct that a label somewhere on the back or bottom of the television and its box is inadequate and will likely not be seen or read by the consumer. But this is not an argument against an advisory. This simply underscores the need for a clearly visible marking on the product that will be evident to the consumer at the point of sale and that may not be removed by anyone other than the final customer. The advisory marking should be located, therefore, on a sticker label affixed to the front of the TV picture tube and its packaging. It should also be attached to the front of a VCR by a tag and the front of its packaging.

Moreover, to ensure that consumers are not misled as to what the advisory means, the rules should specify the wording and minimum size type required for compliance. The standardized language might state, for example:

Although this product may give satisfactory performance in many cable systems for many cable services, it does not fully comply with the FCC's technical specifications for "cable ready" or "cable compatible" products. Consequently, a set-top converter box or other supplementary equipment may be necessary to provide satisfactory performance, access to certain cable services, or to prevent interference to other users of radio devices or cable services. This supplementary equipment may limit the usefulness of certain features which may be contained in this equipment.

Without standardized language, manufacturers could use ambiguous wording or place the advisory in obscure locations to the detriment of a well-informed public.

C. Definition of "Fully Compatible"

The EIA also seeks clarification of the Commission's requirement that any marketing material for equipment other than cable-ready equipment must not convey the impression that the device is "fully compatible with cable service." EIA believes that broad marketing statements such as "tunes cable channels with unsurpassed accuracy" or is "capable of receiving 125 cable channels" are acceptable phrases for equipment that does not meet the cable-ready specifications. In our view, these phrases would lead a reasonable consumer to assume that the product is completely compatible with cable.

Moreover, EIA urges the Commission to "provide concrete assurances that this regulation does not preclude continued use of terms now in use."¹⁰ Terms now in use include "cable-ready" and "cable-compatible" to refer to equipment that does not meet the standards for compatibility.¹¹ As the Commission has ruled, these terms, and other similar terms and phrases, may not be used with any equipment other than true cable-ready products. If consumer electronics manufacturers are allowed broad leeway in marketing and promotional material, the terms "cable-ready" and "cable compatible" will lose their meaning, thereby promoting the pattern of incompatibility.

NCTA urges the Commission to clarify that terminology which would lead a reasonable person to believe that equipment is "fully compatible" with cable may only be used with equipment which satisfies the technical specifications of cable-ready equipment in the Commission's rules.¹²

D. Effective Date of "Cable-Ready" Advisory

¹⁰ EIA Petition at iii.

¹¹ EIA also points out its concern that Canadian regulations require the use of the phrase "Cable Compatible Television Apparatus Canada GRR Part II" on some equipment that would not meet the definition of the term "cable compatible" in the United States. In order to address this discrepancy, the Commission could simply require that the advisory on equipment sold in Canada note that the products do not fully meet the FCC's specifications for equipment in the U.S.

¹² At a minimum, cable compatible products must meet the following criteria: (1) cause no harm to other users of the over-the-air spectrum through signal leakage; (2) cause no harm to the reception of other cable subscribers due to inadequate shielding of the electronics; (3) cause no harm to the reception of other receivers in the same residence; (4) have adequate design for picture and sound quality; and (5) enable the special features and functions of the product to be operational with cable in a consumer-friendly manner.

EIA and Zenith further request that the Commission delay the implementation date of the restrictions on the use of the term "cable-ready" until the end of the model year, i.e. June 30, 1995, on the grounds that some manufacturers have already printed large amounts of marketing material using the term cable ready or its equivalent for non-conforming equipment. Yet they cite no figures as to the costs expended or whether substantially all supplies would even be depleted by June 30, 1995.

NCTA submits that printing costs are just a fraction of the several billion dollar-a-year TV consumer equipment business. When weighed against the harm of continued consumer confusion and frustration, such costs pale in comparison. Those EIA-member companies that went forward with the printing of large quantities of "cable-ready" marketing material, well aware of the long history of compatibility problems and long after the passage of the 1992 Cable Act, have obviously not taken seriously the issues being considered in this rulemaking proceeding. They should not be permitted to take advantage of this joint industry process at the expense of the public.

Therefore, NCTA urges the Commission to adhere to the October 31, 1994 implementation date in the current rules.

CONCLUSION

For the foregoing reasons, the Commission should deny EIA and Zenith's Petitions for Reconsideration with regard to separation of signal security and other command set functions, channel mapping, and the consumer advisory labeling requirement.

Respectfully submitted,

NATIONAL CABLE TELEVISION
ASSOCIATION, INC.

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July 28, 1994



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April 15, 1994

Mr. Joseph Van Loan
Cablevision Industries
One Cable Vision Center, P.O. Box 311
Liberty, NY 12754

Dear Mr. Van Loan:

Thank you for your response to the EIA ballot on draft Interim Standard IS-132 "Cable Television Channel Identification Plan." The co-chairmen Jim Farmer and Leroy Wignot have accepted your comments and will recommend the following changes to the standard: In paragraph 1.0, delete the sentence "It is intended that receivers and cable systems using this frequency allocation standard will identify each frequency allocation by its appropriate channel number", and add in its place *"This standard is not intended to preclude channel mapping in cable systems. To provide compatibility, cable systems will follow the frequency allocations designated in the channelization plan and will seek to ensure that all channel information that is supplied by the cable system properly identifies channels by numbers as well as by signal carried. The cable operator will provide information for printed and on-screen program guides, so that subscribers can directly reference programs with the channel number plan used on cable-ready receivers."* Please let me know in writing (FAX) if this modification addresses your concern within 2 weeks of receipt of this letter. If we do not hear from you we will assume that you have accepted the proposal.

Sincerely yours,

George Hanover
Staff Vice President, Engineering
Consumer Electronics Group

GH:ms

CC: Jim Farmer (ESP)
Leroy Wignot (Thomson CEC)